

SMALL WORKS ROSTER
SECTION 00700
GENERAL TERMS AND CONDITIONS

1.0 DEFINITIONS

- A. **"Addendum"** or **"Addenda"** means alteration or clarification of the plans or specifications provided to bidders by the County prior to bid time, which becomes part of the Contract Documents when the Contract is executed.
- B. **"Claim"** means a written demand by the Contractor seeking (1) a change to Contract Price; (2) a change to Contract Time; (3) a payment of money or damages; and/or (4) any other relief arising out or relating to this Contract.
- C. **"Change Order"** means a written document designated to be a Change Order that amends the Contract, and identifies the following: (1) a change in the Work, (2) a change in the Contract Price, and/or (3) a change in the Contract Time.
- D. **"Change Proposals"** means a document prepared by the Contractor at the request of the County that proposes changes in the Work, the Contract Price and/or Contract Time. The County initiates all requests for Change Proposals.
- E. The **"Contract"** or **"Contract Documents"** constitute the entire integrated agreement between King County and the Contractor for the performance of the Work. The Contract Documents consist of the following: 1.) The signed Agreement between King County and Contractor (the "Agreement Form"); 2.) Division 0, and all documents required therein; 3.) Technical Specifications [Divisions 1 through 17]; 4.) Contract Drawings; 5.) Addenda; and 6.) Change Orders, if any.
- F. **"Contract Execution"** occurs when the County Executive or its designee signs the Contract, which shall occur after the Contractor signs the Contract.
- G. **"Contract Price"** means the total amount payable by the County to the Contractor for performance of the Work in accordance with the Contract.
- H. **"Contractor's Representative"** is the individual who has authority to obligate the Contractor and is identified in the Agreement (§ 00500).
- I. **"Contract Time"** means the number of days or the specific date set forth in the Contract to achieve Substantial Completion of the Work and/or Final Acceptance of the Work, and/or any specifically identified milestones in the Contract.
- J. **"Contract Work"** or **"Work"** refers to the labor, materials, equipment, supplies, services, other items, and requirements of the Contract necessary for the execution, completion and performance of all Work within the Contract by the Contractor to the satisfaction of King County.
- K. **"Day"** means calendar day, unless otherwise specified.
- L. **"Field Directive"** is a document, titled Field Directive, prepared by the County directing the Contractor to proceed promptly with specific work and shall not constitute a Change Order or entitlement to an adjustment in Contract Time and/or Contract Price.
- M. **"Final Acceptance"** is written acceptance of the Project by the County.
- N. **"Hazardous Material"** means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea

formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect.

- O. **"King County"** or **"County"** or **"Owner"** may be used interchangeably and refers to the County of King, a municipal corporation and a home rule charter county of the state of Washington.
- P. **"Notice"** means a written document issued by the Project Representative or Contractor's Representative which is submitted to the other party and delivered by:
 - 1. Depositing in U. S. Mail, which notice shall be effective on the date of receipt;
 - 2. Service on the Parties' representative or Contractor's home office or field office, which notice shall be effective on the date of service;
 - 3. Facsimile to Parties' representative or Contractor's home office or field office, which notice shall be effective upon receipt; or
 - 4. Delivery by electronic mail in PDF format to the party's representative, which notice shall be effective upon receipt.
- Q. **"Notice To Proceed"** is a written directive issued by the County authorizing the Contractor to perform some or all of the Work.
- R. **"Overhead"** shall mean charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical construction of the Work under Contract. Overhead includes Site or Field Overhead and Home Office Overhead.
 - 1. **"Site or Field Office Overhead"** are typically those costs that are related but not limited to supervision, including general foreman and their supervisors, planners, schedulers, engineers, managers, etc. and the direct payroll costs of their project-related service, clerical salaries and their direct payroll costs, the costs of all vehicles, travel, meal and lodging costs associated with those personnel, Site or Field office and utility expense, expense associated with all regulatory compliance, hand and other small tools provided by the Contractor for the use of its forces, all expendable supplies, and all other items incidental to or integral in supporting the physical completion of the Work.
 - 2. **"Home Office Overhead"** is typically those costs that include all general office expenses. Such costs include, but are not limited to, those costs associated with officer and office salaries and related payroll taxes and benefits, costs of office occupancy and maintenance, all supporting services (i.e. utilities, office machines, computers and related items) related to home office function, business taxes and licenses, and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.
 - 3. In addition to the above, whether treated as Site or Field Overhead or as Home Office Overhead, costs of any and all bonds, insurance, and taxes associated with this Contract are to be considered Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
- S. **"Substantial Completion"** means that stage in the progress of the Work where: 1.) The County has full and unrestricted use and benefit of the Project for the purpose

intended; 2.) All the systems and parts of the Contract Work are functional; 3.) Utilities are connected and operate normally; 4.) Only minor incidental work or correction or repair remains to complete all Contract requirements; and, 5.) At the County's option, the Contractor has provided all occupancy permits and easement releases.

- T. "Site" or "Project Site" shall be understood to refer to the location at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.

1.1 INTENT AND INTERPRETATION OF CONTRACT DOCUMENTS

- A. The Contract Documents constitute the entire integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral between the parties.
- B. If the Contractor becomes aware of an error or omission in the Contract Documents, it shall immediately notify the Project Representative. Any work performed by the Contractor after the Contractor becomes aware of an error or omission and until receiving direction from the Project Representative shall be at the Contractor's risk.
- C. Any conflict or inconsistency between the terms or conditions of the Contract Documents shall be resolved by the following descending order of precedence; (1) the signed Agreement §00500, as modified by Change Order amending the Contract Price, Contract Time, or scope of Work; (2) Supplemental Terms and Conditions, if any, §00800; (3) General Terms and Conditions §00700; (4) Technical Specifications, as modified by Addenda or Change Orders, Divisions 1 – 49 (Division 1 shall take precedence over provisions of any other Division); (5) Drawing Details as modified by Change Orders; (6) Contract Drawings as modified by Change Orders; (7) Supplemental Information or reports such as Geotechnical Data Report, Baseline Report (8) all sections in Division 0 not specifically identified herein; and (9) Affidavits, Certificates, and Bonds (§00410, §00420).

1.2 AUTHORITY OF THE COUNTY

- A. Unless the County, in writing, indicates otherwise, the authority to (1) commit to or bind the County to any Change Orders or change in Contract Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Order(s) rests solely in the King County Executive or designee.
- B. The King County Project Representative, or other individual designated in the Notice to Proceed (hereinafter "Project Representative"), is the County's construction site representative and the Contractor shall look to that person in matters relating to compliance with Contract requirements. The Project Representative shall be the sole judge of the Work and materials with respect to quantity, quality and acceptability of materials and Work furnished.

1.3 RESPONSIBILITIES OF CONTRACTOR

In addition to the obligations set forth within the Contract Documents, the Contractor has the following responsibilities:

- A. Unless specified elsewhere within the Contract, the Contractor shall provide and pay for any and all labor, materials, tools, equipment, water, light, power, utility, transportation, supervision, and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary to correctly execute and complete the Work within the Contract Time.

- B. All aspects of the Work shall be accomplished by the Contractor and its subcontractors and suppliers in a workmanlike manner in strict conformity with the Contract Documents. Material and equipment shall be new and of a quality equal to or better than that specified. Equipment offered shall be current models which have been in successful regular operation under comparable conditions. The Work performed shall be in conformity with the best modern practice of the trade with the intent to secure the best standard of construction, material and equipment.
- C. The Contractor is responsible for establishing the manner, means, methods and mode of performing the Work for this Contract as well as controlling and supervising the division of Work among employees, subcontractors, agents and suppliers.
- D. Except for those permits, easements and variances specified in the Contract as having been obtained by the County, all permits, easements, licenses and variances necessary to perform the Work shall be timely secured and paid for by the Contractor to complete the Work within the Contract Time.
- E. The Contractor shall perform all Work in full compliance with local, state and federal laws, ordinances, resolution, permits, and regulations.
- F. All subcontractors and suppliers selected by the Contractor shall be properly licensed, registered or certified as required by the laws of Washington, and qualified to perform the assigned Work in accordance with RCW 39.06.020 and RCW 18.27, as applicable. If requested by the County, the Contractor shall provide documentation verifying the qualifications of its subcontractors and suppliers.
- G. The Contractor acknowledges and agrees that the Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the County. As such, they have no authority to bind the County or control employees of the County, third party contractors, or other entities. Contractor shall supervise and be responsible for the acts and omissions of its subcontractors and suppliers used under this Contract.
- H. The Contractor must designate, in writing, the Contractor's Representative responsible for administering the Contract and possess the authority to bind and obligate the Contractor in the performance of the Work.

1.4 ADMINISTRATION OF THE CONTRACT

- A. All time requirements set forth in the Contract Documents are of the essence.
- B. The Contractor shall plan and prosecute the Work timely and diligently with adequate forces so that all Work, including contract closeout, is performed and completed in accordance with Contract requirements.
- C. At the written direction of the Project Representative, after Contract Execution the Contractor shall promptly submit to the County, for acceptance, a Schedule of Values that identifies the various activities of the Contract Work and their values and quantities, including overhead and profit for each activity to be performed for the Contract. The Schedule of Values shall be used as a basis for making progress payments and regularly updated by the Contractor. Payment of Work shall be made only for and in accordance with those activities identified in the Schedule of Values.
- D. At the written direction of the Project Representative, after Contract Execution the Contractor shall promptly submit to the County a Project Schedule for review and comment. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate critical path, the date to achieve Substantial Completion and Final Acceptance, and all other milestones established by the Contract Documents. The Project Schedule shall be updated regularly by the

Contractor and shall be used by the County as a basis for making progress payments.

- E. The Contractor shall provide the County with required project submittals in accordance with the Contract Documents. The Contractor shall perform no portion of the Work requiring submittals until the submittal has been reviewed and returned by the County with one of the following annotations (1) no exception taken or (2) note markings or (3) if advised, instructions to resubmit.
- F. If the Contractor determines that one or more portions of the Contract Documents require clarification or interpretation by the County, the Contractor shall promptly submit a written Request for Information ("RFI") to the County in a manner acceptable to the Project Representative. The County shall respond to the RFI in writing with reasonable promptness. The County's response shall not be considered a change to the Contract requirements. The Contractor may request a Change Order if Contractor reasonably believes the County's response to the RFI causes a change in Work impacting Contract Price or Contract Time.

1.5 TESTS, INSPECTIONS AND ACCESS TO WORK

- A. The Contractor shall, at its own cost, document and maintain an adequate and independent testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the Contract Documents. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to the County upon request.
- B. The County may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is being performed by the Contractor in accordance with the Contract. The County shall promptly notify the Contractor if an inspection or test conducted by the County reveals that the Work is not in accordance with the Contract. The results obtained by the County's inspection or test of the Work shall take precedence over conflicting results conducted by the Contractor's inspection or test.

1.6 CORRECTION OF WORK OR DAMAGED PROPERTY

If material, equipment, workmanship or Work proposed for, or incorporated into the Work, does not meet the Contract requirements or fails to perform satisfactorily, the County shall have the right to reject such Work by giving the Contractor written notice that such Work is either defective or non-conforming. The County shall require the Contractor, within a designated time set forth by the County, to promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to the County. The Contractor shall also be responsible for all repairs to any property and work damaged by the Contractor. The Contractor shall not be entitled to additional time or money for the correction of defective or nonconforming work or for the repair of damaged property.

1.7 SUBSTITUTION OF PRODUCTS & PROCESSES

- A. Substitutions requested by the Contractor will be subject to the County's prior written acceptance at the County's sole discretion. Requests for Substitution must specifically identify in writing the:
 - 1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
 - 2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;

3. Proposed change to the Contract Price and/or Contract Time; and,
 4. Compatibility with or modification to other systems, parts, equipment or components of the Project and Contract Work.
- B. Contractor shall pay for all costs of any redesign or modification to other systems, parts, equipment or components of the Work, which result from the substitution.
 - C. When the County approves a substitution request, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Contract Work. The County has the right to order an unaccepted, substituted article removed and replaced without additional cost to the County.
 - D. The County has a right to a deductive Change Order if the substituted product or process is less costly than the product or process originally specified in the Contract.
 - E. If the County does not accept the substitution proposal the Contractor shall proceed, without delay or cost to the County, with the Contract Work as originally specified.

1.8 CHANGES IN WORK AND CHANGE ORDERS

- A. All changes to the Contract must be made in writing and signed by the County Executive or designee. No oral statement by any person shall change or modify the Contract. Any Field Directive, response to Request for Information, or other written directive, interpretation, instruction or determination (hereinafter referred to as "Direction") provided by the County is not considered a Change Order or a change to Contract requirements, and shall not constitute, in and of itself, entitlement to an adjustment in Contract Price and/or Contract Time.
- B. To the extent the Contractor believes a Direction and/or the onset of an event or impact to the Project entitles the Contractor, or its subcontractors or suppliers, to additional money or time, the Contractor must file a Request for Change Order in accordance with the following requirements:
 1. The Request for Change Order must be filed with the Project Representative within thirty (30) days after issuance of the Direction and/or the onset of the event or impact to the Project. The Contractor may request, in writing, an extension in time to submit the Request for Change Order.
 2. Provide a detailed explanation of Direction and/or onset of the event or impact to the Project causing the change in Contract Price and/or Contract Time.
 3. Provide the Contract provisions supporting the Request for Change Order.
 4. Provide the requested change in the Contract Price
 5. Provide the requested change in the Contract Time (number of days),
 6. Provide documentation supporting the request for change in Contract Price or Contract Time including cost records, schedule analysis and any other supporting documents.
 7. Failure by the Contractor to follow the above requirements and/or to maintain and disclose the required documents and records shall constitute a waiver of the Contractor's claim for a change in Contract Price or Contract Time.
- C. The County will make a written determination on the Request for Change Order within thirty (30) days of receipt of the fully documented Request. The County may inform the Contractor that additional information or additional time is needed to evaluate the Request. Under such circumstances, the County will identify a date certain when a decision on the Request for Change Order will be made.

- D. If the County and Contractor reach agreement on the terms and conditions of the Request for Change Order, including any adjustment in Contract Price or Contract Time, such agreement shall be incorporated into a Change Order and signed by both parties. This bilateral Change Order shall represent full and complete payment, time adjustments, and final settlement of all changes, claims, damages, costs, expenses and profit related to the any work either covered or affected by the Change Order, or related to the events giving rise to the bilateral Change Order.
- E. The County may unilaterally issue a Change Order in its sole discretion without invalidating the Contract and without notice to the surety, making changes within the general scope of the Contract. The Contractor is required to continue with the performance of Work, including work associated with the unilateral Change Order. If any unilateral Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, the County may make an adjustment in Contract Price or Contract Time. If the Contractor disagrees with the adjustment in Contract Time or Contract Price as indicated in the unilateral Change Order, it may file a Claim in accordance with the provisions of this Contract.
- F. Subject to Subsection A-E above, no later than 30 days from the satisfactory completion ("Satisfactory Completion") of any additional Work, the County shall prepare and issue to the Contractor either an agreed upon bilateral Change Order or unilateral Change Order, including any adjustment in the Contract Price or Contract Time. As used herein, "Satisfactory Completion" means that the Project Representative shall have confirmed in writing that all tasks have been completed to the reasonable satisfaction of the County, including submittal by the Contractor of all required time and cost documentation. Satisfactory Completion does not mean Substantial Completion.
- G. Unless adjusted by a bilateral change order, the duration requirements set forth within this Section 00700.1.08 are to be followed by all parties performing Work under this Contract.

1.9 TIME AND PRICE ADJUSTMENTS

- A. The Contract Time shall only be changed by a Change Order. A Contractor is not entitled to a change in Contract Time unless the progress of the Work on the critical path ("Critical Path") is delayed and completion of the Work within Contract Time is delayed. As used herein, "Critical Path" means the longest, continuous sequence of interrelated activities that begins on the date the County issues Notice to Proceed and extends to Substantial Completion of the project. These activities are critical because delay to an activity on this path will extend Contract Time. No change in Contract Time shall be allowed to the extent the time of performance is changed due to the act or omission of the Contractor, or its subcontractors, suppliers, agents, representatives or employees.
- B. The Contract Price can only be changed by a Change Order. The value of any Work covered by a Change Order or of any Claim for increase or decrease in the Contract Price shall only be determined by one of the following methods listed below:
 - 1. Unit Price Method: Predetermined unit prices as set forth in the Contractor's Bid for a quantity(s) of work to be performed, including price charged for labor, material, Overhead and profit. Field measurements shall be performed to justify actual quantities of work performed by Contractor. A not to exceed amount of reimbursement as established by the County shall also be identified in the Change Order.

2. Fixed Price or Lump Sum Method: Agreed upon fixed and specified amount as the total compensation for the performance and completion of the scope of work identified in the Change Order, including all costs for labor, equipment, material, Overhead and profit.
3. Time and Materials Method: Agreed upon method of payment where the Contractor shall be paid for (a) actual cost of direct labor, usually at specified hourly rates, (b) actual costs of material and equipment usage, and (c) agreed upon fixed price add-ons to cover all Contractor Overhead and profit, including subcontractors and suppliers, for the work to be performed under the Change Order. Actual hours for work performed will also be tracked under the Change Order. The total markup allowed amount for all Overheads and profit for the Contractor and all subcontractors and suppliers of any tier shall not exceed 25% of the direct cost to perform the Change Order work. A not to exceed amount of reimbursement as established by the County shall also be identified in the Change Order.

1.10 PAYMENT AND RETAINAGE

- A. The County shall make progress payments for Work performed by the Contractor, in such amounts as County determines are properly due, within thirty (30) days after receipt of a properly executed invoice. Within eight (8) days after receipt of invoice, the County will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The County shall retain 5% of the amount of each progress payment until: (a) forty-five (45) days after Final Acceptance, (b) receipt of all documents required by law including but not limited to lien releases or satisfaction of lien claims, or, where applicable, the consent of surety to release of the retainage, and (c) satisfaction of any unpaid claims the County may have against the Contractor. In accordance with RCW 60.28.011, Contractor may request that monies reserved be retained in a fund by County, deposited by the County in a bank or savings and loan, or placed in escrow with a bank or trust company. The County may permit the Contractor to provide a bond in lieu of the retained funds.
- C. The Contractor shall ensure that subcontractors and suppliers for this Contract are promptly paid to the fullest extent required by RCW 39.04.250, as may be amended.
- D. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76

1.11 TITLE

Title to all Work and materials covered by a progress payment shall pass to the County at the time of such payment free and clear of all liens, claims, security interests and encumbrances. Passage of title shall not, however, relieve the Contractor from any of its duties and responsibilities for the Work or materials or relieve any rights of the County to insist on full compliance by the Contractor with Contract Documents.

1.12 COMPLETION OF WORK

- A. The Contractor shall notify the Project Representative when it considers Substantial Completion of the Work to have been achieved. The County shall inspect the Work and if, upon inspection, the County determines that Substantial Completion has occurred in accordance with the terms of this Contract, the County will issue to the Contractor a Certificate of Substantial Completion. The Certificate shall identify any

remaining obligations the Contractor may have under the Contract prior to the achievement of Final Acceptance.

- B. If the County determines that Substantial Completion has not occurred, the County may prepare a punch list of items to be corrected or completed by the Contractor in accordance with Contract requirements. Should the Contractor fail to complete or correct all remaining punch list items within the Contract Time, the County may assess Liquidated Damages against the Contractor for failure to achieve Substantial Completion in a timely manner.
- C. Final Acceptance shall be achieved when all the obligations of the Contract have been fully and successfully performed by the Contractor in accordance with the Contract and accepted by the County. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations under this Contract or the Performance and Payment Bonds (if applicable), or constitute a waiver of any claims by the County arising from or related to Contractor's performance or failure to perform the Work in accordance with the Contract.

1.13 CONTRACTOR RESPONSIBILITY FOR SAFETY

- A. The Contractor shall be solely and completely responsible for conditions of the Site including safety of all persons and property during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner which meets all legal requirements for the provision of a safe workplace, including the safety regulations set forth in "Safety Standards for Construction", Chapter 296-155 WAC, and "General Safety Standards", Chapter 296-24 WAC, issued by the Washington State Department of Labor and Industries.
- B. The Contractor shall be responsible for erecting adequate signs, fencing, barricades, lights or security to protect all Work and adjoining properties until the Project Representative authorizes the removal in writing. Damages or losses that may occur shall be the responsibility of the Contractor, except those caused by the acts or omissions of the County.

1.14 HAZARDOUS MATERIALS

The Contractor shall conduct its work to meet the requirements set forth in the specifications and obey all applicable laws and regulations related to storage, use, and disposal of Hazardous Materials. The Contractor shall stop Work and give immediate notice to King County upon the discovery of any Hazardous Materials while conducting Work on the Project Site and proceed thereafter only as directed by King County or as set forth in the specifications. If the material proves positive as containing asbestos, such material shall be handled in compliance with WAC 296-62-077 through 296-62-07753.

1.15 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

The Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, improvements, utilities, trees, and vegetation located at or near the Project Site. The Contractor shall repair, at no cost to the County, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the County may have the necessary work performed and deduct or charge the cost to the Contractor. Prior to beginning the Work, the Contractor shall give proper notification as required by RCW 19.122.030 to the agencies that have

utilities in place, and shall cooperate with these agencies in the protection and relocation of underground utilities, facilities and structures.

1.16 WORKERS' BENEFITS

The Contractor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW, and shall furnish proof of payment if requested by King County. If any payment required by Title 50 or Title 51 is not made when due, King County may retain such payments from any money due the Contractor and pay the same into the appropriate fund.

1.17 HOURS OF LABOR

The Contractor shall comply with the "hours of labor" requirements and limitations as set forth in chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as overtime of crews) incurred by the County as a result of Contractor's work beyond eight (8) hours per day or forty (40) hours per week. Without the County's prior written approval, any Work performed after regular working hours or on Sundays or legal holidays, shall be performed without additional expense to the County.

1.18 RECORD DOCUMENTS

When requested and/or upon completion of the Work the Contractor shall provide the Project Representative with record drawings and specifications showing all deviations from the original (at the time of bid submittal) Contract Documents. Drawings and specifications shall show actual dimensions, locations, approved changes, options and alternates made during construction. Include type of equipment, make, model, serial number, and acquisition cost of installed capital equipment or other fixed assets. The County may use record documents to verify the appropriate progress payment.

1.19 WARRANTIES

- A. In addition to any special warranties provided elsewhere in the Contract, the Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by the Contractor or its subcontractors and suppliers.
- B. Warranty period shall be for 365 days after the date of Substantial Completion of the entire project or the duration of a special extended warranty offered by a supplier or common to the trade. The Contractor shall furnish to King County any guaranty or warranty furnished as a normal trade practice in connection with the purchase by the Contractor of any equipment or materials; provided, such guaranty or warranty shall be in addition to those specific requirements for particular equipment or Work items indicated elsewhere in the Contract Documents.
- C. If within the applicable warranty period of any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written notice from the County to do so. If the County determines the Contractor's corrective action is not satisfactory or timely performed, the County has the right to correct the problem itself or procure the necessary services at the cost of the Contractor.

1.20 CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES

No officer, employee, agent or subcontractor of the Contractor shall willfully attempt to secure preferential treatment in his or her dealings with the County by offering any

valuable consideration, things of value or gift, whether in the form of services, loan, thing or promise, in any form to any County official or employee. Failure to comply with this subsection is a violation of KCC 3.04.060 and may result in criminal liability, civil penalties, cancellation of current contracts with the County and disqualify the Contractor or subcontractor from bidding on any other contract for a period of two years.

1.21 TERMINATION OF CONTRACT

- A. **Termination for Default:** The County may terminate the Contract, in whole or in part, upon written notice to the Contractor whenever the Contractor is deemed to be in default or violates material provisions of the Contract. Upon termination, King County may exclude the Contractor from the Project Site and take possession of the Work and all of the materials and equipment for which the County has paid any amount to the Contractor. The Contractor shall be entitled to payment for portions of the Work satisfactorily completed prior to termination, less costs incurred by the County as a result of the Contractor's default.
- B. **Termination for Convenience:** The County shall have the right to terminate this Contract, in whole or in part, for any reason whatsoever by notice in writing to the Contractor. The Contractor shall immediately discontinue the Work terminated, unless the notice specifies otherwise. Upon such termination, the Contractor shall be paid for all Work, not terminated, which is satisfactorily completed up to the date of termination. If the termination is only partial, the Contractor shall be paid for performance of the remaining Work in accordance with the Contract.

1.22 INDEMNIFICATION/HOLD HARMLESS

- A. The Contractor shall protect, defend, indemnify, and hold harmless the County, its officers, officials, employees, and agents, from any and all claims for damages, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from the Contractor's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.
- B. The Contractor's obligations under this Section shall include, but not be limited to
 - 1. The duty to promptly accept tender of defense and provide defense to the County at the Contractor's own expense.
 - 2. The duty to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County with a full and complete indemnity and defense of claims made by the Contractor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.
 - 3. To the maximum extent permitted by law, the Contractor shall indemnify and defend the County from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the work specified.
- C. The County may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any claim for injury, and/or (2) pay any claim for injury of which the County

may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of this Contract.

- D. Any amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Contractor shall reimburse and otherwise be liable for claims costs incurred by the County, including, without limitation, costs for claims adjusting services, attorneys, engineering and administration.
- E. In the event the County incurs any judgment, award, and/or costs arising there from, including attorney's fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the Contractor.

1.23 INSURANCE

The Contractor shall obtain and continuously carry during the term of this Contract all such insurance as may be required by the County. A copy of the County's insurance requirements is attached hereto in Section 00430 and is incorporated by reference as if set forth in full herein.

1.24 PERFORMANCE AND PAYMENT BOND

- A. The Contractor shall execute and deliver to the County a performance and payment bond for 100% of the Contract Price, on a form acceptable to the County with an approved surety company and in compliance with chapter 39.08 RCW. The Contractor shall notify the surety of any changes in the work. The Contractor shall promptly furnish additional bond security to protect the County and persons supplying labor or materials required by the Contract if: (1) the Contract Price increases beyond the bond amount or (2) the County has reasonable objection to any surety provided by the Contractor.
- B. In the event that the Contract Price is less than \$35,000, which sum shall be determined at the time of bid, the Contractor may, prior to Contract Execution and in lieu of the above mentioned bond, elect to have the County retain 50% of the Contract Price for a period of either thirty (30) days after Final Acceptance, or until receipt of all necessary releases from the Department of Revenue and Department of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later. The County may deny this request for good cause.
- C. A copy of the County's performance and payment bond is attached hereto in Section 00420 and is incorporated by reference as if set forth in full herein.

1.25 LIQUIDATED DAMAGES

- A. The liquidated damage amount(s) set forth elsewhere in the Contract Documents will be assessed for the Contractor's failure to achieve Substantial Completion within the Contract Time or Final Acceptance or specifically identified milestones to complete identified Work. These liquidated damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These liquidated damage amounts are fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such events sustain. These amounts shall be construed as the actual amount of damages sustained by the County, and may be retained by the County and deducted from payments to the Contractor. Assessment of liquidated damages shall not release the Contractor from any further obligations or duties pursuant to the Contract Work.

1. **Failure to Achieve Substantial Completion** - Timely performance and completion of the Work is essential to the County and the time limits stated in the Contract are of the essence. The County will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time.
2. **Failure to Achieve Final Acceptance** - Final Acceptance of the Work is essential to the County and the time limits as identified by the County are of the essence. The County will incur serious and substantial damages if Final Acceptance of the Work does not occur as the County requires.

1.26 TAXES

OPTION 1 - TAXES – RETAIL SALES

- A. The Work to be performed under this Contract constitutes a “retail sale” as such term is defined in RCW 82.04.050, and the Contract Price is subject to the State of Washington and local agency retail sales taxes. However, Bidder/Contractor shall not include such retail sales tax on the Contract Price in their bids. Such retail sales tax will be calculated on the total Contract Price and King County will add retail sales tax (state and local) on each progress payment and final payment to the Contractor for transmittal by the Contractor to the Washington State Department of Revenue or to the applicable local government.
- B. Other than state or local retail sales tax on the Contract Price as specified above, the Bidder/Contractor shall include in the Bidder’s proposed price(s) all applicable taxes which the Contractor will be required to pay for the Work under this Contract. For example, the County will not add sales tax the Contractor pays on the purchase of tools, machinery, equipment or consumables not integrated into the Work. No adjustment will be made in the amount to be paid by King County under this Contract because of any misunderstanding by or lack of knowledge of the Bidder/Contractor as to liability for, or the amount of, any taxes for which the Bidder/Contractor is liable or responsible by or under this Contract or because of any increases in tax rates imposed by any federal, state or local governments.
- C. Retail sales/use taxes, if any, payable on equipment, materials and other items provided hereunder to the Contractor by King County shall not be included in the Bidder’s proposed prices. If taxes on such items are required to be paid, King County shall make such payment, either through the Contractor or direct to the Washington State Department of Revenue

OPTION 2 - TAXES – RULE 171

- A. King County has determined that the Work to be performed under this Contract is exempt from the retail sales taxes pursuant to RCW 82.04.050 and WAC 458.20.171 (“Rule 171”). Therefore, retail sales taxes (state and local) will not be paid by King County on the Contract Price. Bidders/Contractors are advised that they may be considered the consumers of all materials, equipment, and supplies, including prefabricated and precast items, used or consumed by them in performing the Work and would be responsible for paying the retail sales/use tax to their materialmen and suppliers. Bidders shall include an amount equal to such taxes, if applicable, in their bids. If a Bidder/Contractor has questions regarding the application of Rule 171, the Bidder should contact the Washington State Department of Revenue.
- B. Other than state or local retail sales tax on the Contract Price as specified above, the Bidder/Contractor shall include in the Bidder’s proposed price(s) all applicable taxes

which the Contractor will be required to pay for the Work under this Contract. For example, the County will not add sales tax the Contractor pays on the purchase of tools, machinery, equipment or consumables not integrated into the Work. No adjustment will be made in the amount to be paid by King County under this Contract because of any misunderstanding by or lack of knowledge of the Bidder/Contractor as to liability for, or the amount of, any taxes for which the Bidder/Contractor is liable or responsible by or under this Contract or because of any increases in tax rates imposed by any federal, state or local governments.

- C. Should the Washington State Department of Revenue determine portions or all of the Work do not qualify for the exemption, the Contract will be amended to add any retail sales tax and deduct or otherwise adjust for retail sales/use taxes calculated by the successful Bidder/Contractor as part of its bid price to be paid to materialmen/suppliers in performance of the Contract.
- D. No increase will be made in the amount to be paid by King County under this Contract because of any misunderstanding by or lack of knowledge of the Contractor as to liability for, or the amount of any taxes for which the Contractor is liable or responsible by law or under this Contract or because of any increases in tax rates imposed by any federal, state or local government.

OPTION 3 - TAXES – COMBINATION

- A. Bid Items @ and Alternate Bid Items @ as set forth on the Form of Bid, Section 00300, constitute a “retail sale” as such term is defined in RCW 82.04.050, and the price for these items are subject to the State of Washington and local agency retail sales taxes. However, Bidders shall not include such retail sales tax for these Bid Items in their bids. Such retail sales tax will be calculated as part of the Contract Price and King County will add retail sales tax (state and local) on the appropriate progress payment covering such Bid Items and/or final payment to the Contractor for transmittal by the Contractor to the Washington State Department of Revenue or to the applicable local government.
- B. In addition, King County has determined Bid Items @ and Alternate Bid Items @ as set forth on the Form of Bid, Section 00300, are exempt from retail sales tax pursuant to RCW 812.04.050 and WAC 458.20.171 ("Rule 171"). Therefore, state and local retail sales taxes will not be paid by King County on these Bid items. Bidders are advised, for the purposes of these Bid Items, Bidders may be considered the consumers of all materials, equipment, and supplies, including prefabricated and precast items, used or consumed by them in performing the work associated with the Bid Items and would be responsible for paying the retail sales/use tax to their materialmen and suppliers. Bidders shall include an amount equal to such taxes, if applicable, in their bids. If a Bidder has questions regarding the application of Rule 171, the Bidder should contact the Washington State Department of Revenue.
- C. Should the Washington State Department of Revenue determine portions or all of the Work do not qualify for the Rule 171 exemption, the Contract will be amended to add any retail sales tax and deduct or otherwise adjust for retail sales/use taxes calculated by the successful Bidder as part of its bid price to be paid to materialmen/suppliers in performance of the Contract.
- D. Other than state or local retail sales tax on the Bid Items as specified above in subparagraph A and except as provided in subparagraph E below, the Bidder shall include in the Bidder's proposed price(s) all applicable taxes which the Contractor will be required to pay for the Work under this Contract. For example, the County will not add sales tax the Contractor pays on the purchase of tools, machinery,

equipment or consumables not integrated into the Work. No adjustment will be made in the amount to be paid by King County under this Contract because of any misunderstanding by or lack of knowledge of the Bidder/Contractor as to liability for, or the amount of, any taxes for which the Bidder/Contractor is liable or responsible by or under this Contract or because of any increases in tax rates imposed by any federal, state or local governments.

- E. Retail sales/use taxes, if any, payable on equipment, materials and other items provided hereunder to the Contractor by King County shall not be included in the Bidder's proposed prices. If taxes on such items are required to be paid, King County shall make such payment, either through the Contractor or direct to the Washington State Department of Revenue.

1.27 NON DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

- A. The Contractor shall comply with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17, and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract Documents.
- B. During performance of the Work:
 - 1. Contractor shall not discriminate against any employee or applicant for employment because of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except for minimum age and retirement provisions, unless based upon a bona fide occupation qualification.
 - 2. The Contractor will undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. The Contractor's equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.
 - 3. The Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except for minimum age and retirement provisions, unless based upon a bona fide occupation qualification.

4. Contractor shall permit access to its books, records and accounts, and to its premises by the County, its representatives or governmental officials, for the purposes of investigation to ascertain compliance with this section of the Contract.
- C. **Equal Benefits to Employees with Domestic Partners.** For any contract valued at \$25,000 or more, the Contractor shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach. Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at:
http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx
1. When the contract is valued at \$25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at:
http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx
- D. **Sanctions for Violations.** Any violation of the requirements of the provisions of this Section shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment, cancellation or suspension, in whole or in part, of the Contract by the County, or invoking the enforcement provisions of King County Code 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility of County contracts.
- E. **Assistance with the Requirements of this Section.** Obtain copies of KCC 12.16, 12.17, 12.18 and 12.19 at the following link:
http://your.kingcounty.gov/mkcc/clerk/code/15_Title_12.pdf

Address questions related to this section by contacting King County Business Development and Contract Compliance (BDCC) Section at the address below. Please include the contract number in all correspondence.

King County Business Relations and Economic Development
Business Development and Contract Compliance Section
Chinook Building
401 Fifth Avenue, Third Floor
Seattle WA 98104

1.28 CONTRACTOR CLAIMS

- A. If the Contractor disagrees with the denial of a Request for Change Order, the Contractor may file a claim against the County. The Contractor shall give written notice to the County within twenty-one (21) days of the occurrence of the event(s) giving rise to the claim(s), or within twenty-one (21) days of the date the Contractor knew or should have known of the facts or events giving rise to the claim(s), whichever occurs first. Any claim for damages, adjustment to Contract Price or extension to Contract Time, whether under this Contract or otherwise, shall be deemed to have been waived by the Contractor unless a timely written claim is made to the County in compliance with the provisions of this Contract.
- B. The Contractor's written claim shall include the following information:
1. The date of the Contractor's claim;

2. A detailed description of the nature and circumstances that caused the claim;
 3. The provisions of the Contract that support the claim;
 4. If an adjustment in the Contract Price is sought, the exact amount requested, calculated in accordance with the Contract; and
 5. If an adjustment in the Contract Time is sought, the specific number of days and dates requested and an analysis of the progress schedule showing the schedule change or disruption.
- C. The Contractor shall keep complete records of extra cost and time incurred as a result of the asserted events giving rise to the claim. The County shall have reasonable access to any of the Contractor's or subcontractors and suppliers records needed for evaluating the claim.
- D. The County will evaluate the claim(s) and respond in writing within forty-five (45) days of the Contractor's claim submittal, provided the procedures in this Section are followed by the Contractor. If the County determines that a claim is valid, the County will adjust the Contract Price and/or Contract Time through a change order to the Contract. No adjustment in Contract Price or Contract Time will be made for an invalid claim or for a claim submitted in violation of the procedures set forth within this Section.
- E. In spite of any claim submitted, the Contractor and its subcontractors and suppliers, shall proceed promptly to provide all work, including the disputed work, required by the County under the Contract.
- F. Unless adjusted by a bilateral change order, the duration requirements set forth within this Section 00700.1.28 are to be followed by all parties performing Work under this Contract.

1.29 LITIGATION

- A. As a mandatory condition precedent to the initiation of litigation by the Contractor against the County, the Contractor shall:
1. Comply with the provisions set forth within Section 00700.1.28 ("Claims") above;
 2. Enter into an Alternative Dispute Resolution Process (ADR) agreeable to both parties; and
 3. Any litigation brought against the County arising from or connected to this Contract must be filed within 150 days from either the issuance of the Certificate of Substantial Completion for the entire Contract or Final Acceptance if no Certificate of Substantial Completion of the entire Contract is issued.
 4. Unless adjusted by a bilateral change order, the duration requirements set forth within this Section 00700.1.29 are to be followed by all parties performing Work under this Contract

1.30 MISCELLANEOUS

- A. Assignment of Contract. The Contractor shall not assign this Contract, in whole or in part, to any third party without the prior written consent of the County.
- B. Compensation, Wages, Benefits and Taxes. The County assumes no responsibility for the payment of any compensation, wages, benefits or taxes owed by the Contractor to a third party by reason of this Contract.
- C. Compliance with Laws. The Contractor agrees to comply with all federal, state and local laws, rules and regulations, including but not limited to such environmental

protection laws that may be applicable to this Project, that are now effective or in the future become applicable to the Contractor's business, equipment and personnel engaged in operations and services covered by this Contract or accruing out of the performance of those operations.

- D. No Third Party Contracts. Except as otherwise may be provided, this Contract shall not be construed to create a contractual relationship of any kind between: any architect, engineer, Subcontractor, Supplier, or other persons other than the County and Contractor.
- E. Notice to County of Labor Disputes. Contractor, and its Subcontractor and Suppliers, shall immediately notify the County in writing of any actual or potential labor dispute that may delay or threaten to delay timely performance of this Contract.
- F. Choice of Law and Venue. In the event that either party shall bring a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in the Superior Court, King County Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.
- G. Waiver and Modification. This Contract cannot be modified, nor any provision waived, except in a written document signed by both parties

END OF SECTION